

# **IMPLEMENTING AGREEMENT**

**by and between the**

**REGENTS OF THE UNIVERSITY OF CALIFORNIA**

**and the**

**UNITED STATES FISH AND WILDLIFE SERVICE**

**TO ESTABLISH A CONSERVATION PROGRAM FOR THE FEDERALLY LISTED  
ENDANGERED OHLONE TIGER BEETLE (*Cicindella ohlone*) AND THREATENED  
CALIFORNIA RED-LEGGED FROG (*Rana aurora draytonii*) IN CONNECTION WITH  
THE RANCH VIEW TERRACE PROJECT, UNIVERSITY OF CALIFORNIA AT  
SANTA CRUZ CAMPUS, SANTA CRUZ COUNTY, CALIFORNIA.**

## **1.0 PARTIES**

This Implementing Agreement (Agreement) is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2004 by and among the following Parties: the Regents of the University of California (the Regents or Permittee) and the U.S. Fish and Wildlife Service (Service). This Agreement defines the Parties' roles and responsibilities with respect to the effects of the Permittee's proposed project on portions of the University of California at Santa Cruz, Santa Cruz County, California, on the subject listed species and their habitats. It also provides each Party with a common understanding of actions that will be undertaken to minimize and mitigate the project's effects on the subject listed species and their habitats.

## 2.0 RECITALS AND PURPOSES

2.1 Recitals. The Parties have entered into this Agreement in consideration of the following facts:

(a) The Ohlone tiger beetle (*Cicindella ohlone*) was listed as an endangered species in the *Federal Register* (66 FR 50340) on October 3, 2001, effective that date, pursuant to the provisions of the Endangered Species Act, 16 U.S.C. § 1531 *et seq.*, as amended (ESA).

(b) The California red-legged frog (*Rana aurora draytonii*) was listed as a threatened species in the *Federal Register* (61 FR 25832) on April 23, 1996, effective May 23, 1996, pursuant to the provisions of the ESA.

(c) The Permittee has requested an Incidental Take Permit (PRT-XX) to authorize the incidental take of Ohlone tiger beetle and California red-legged frog (Plan Species) on certain portions of the University of California at Santa Cruz for the term of 60 years as defined below at Section 6.

(d) The Permittee, with technical assistance from the Service, has developed a series of actions, described in the Habitat Conservation Plan (HCP), dated XX, 2004, to minimize and mitigate the effects of the proposed project as fully described in the HCP upon the Plan Species and their associated habitats.

2.2 Purposes. The purposes of this Agreement are:

(a) To contractually bind the Parties to this Agreement and to ensure implementation of each of the terms hereof, including the HCP incorporated by reference herein;

(b) To describe remedies and recourse should any party fail to perform its obligations as set forth in this Agreement; and

(c) To provide certainty to the Permittee regarding performance of HCP mitigation measures with respect to Plan Species.

On June 10, 2004, the court in *Spirit of the Sage Council v. Norton*, Civil Action No. 98-1873 (D.D.C.) ordered that, until the Service completes a rulemaking on revocation standards for incidental take permits, the Service may not approve new incidental take permit or related documents containing “No Surprises” assurances. Pursuant to the June 10, 2004, order in *Spirit of the Sage Council v. Norton*, Civil Action No. 98-1873 (D.D.C.), the Service is enjoined from approving new Section 10(a)(1)(B) permits or related documents containing “No Surprises” assurances until such time as the Service adopts new permit revocation rules specially

application to Section 10(a)(1)(B) permits in compliance with the public notice and comment requirements of the Administrative Procedure Act. This notice concerns a step in the review and processing of a Section 10(a)(1)(B) permit and any subsequent permit issuance with be in accordance with the Court's order. Until such time as the Service's authority to issue permits with "No Surprises" assurances has been reinstated, the Service will not approve any incidental take permit or related documents that contain "No Surprises" assurances.

When, in response to the Court's order in *Spirit of the Sage Council v. Norton*, Civil Action No. 98-1873 (D.D.C.), the "No Surprises" assurances rule is reinstated or revised, the reinstated or revised "No Surprises" assurances shall apply to this HCP. Any permit issued pursuant to this HCP shall be automatically amended in a manner consistent with the reinstated or revised "No Surprises" rule so as to afford the maximum protection to the Permittee consistent with the reinstated or revised "No Surprises" rule.

### **3.0 DEFINITIONS**

The following terms as used in this Agreement shall have the meanings set forth below:

- 3.1 In General. Terms used in this Agreement shall have the same meaning as those terms in the Endangered Species Act (ESA) and the Service's implementing regulations as such regulations exist as of the date of the covered activity, except to the extent this Agreement expressly provides otherwise.
- 3.2 "Adaptive Management" means a flexible approach to the long-term management of wildlife and habitat resources on Covered Lands, defined below. Management actions are directed over time by the results of ongoing monitoring activities and other pertinent information, and as recommended in the Permittee's annual report as submitted to the Service.
- 3.3 "Agreement" means this Implementing Agreement, including the HCP which is incorporated by reference, unless the context herein clearly indicates otherwise.
- 3.4 "Changed Circumstances" means changes in circumstances affecting a species or geographic area covered by the HCP that can reasonably be anticipated by the Permittee and the Service and that can be planned for (e.g., the listing of new species, or a fire, flood or other natural catastrophic event in areas prone to such events). Changed Circumstances and the planned responses to those circumstances are described in Chapter 7 of the HCP.

- 3.5 “Covered Activities” means all activities associated with the construction, management, and occupancy of the Ranch View Terrace, the construction and use of the Emergency Response Center Storage site, and the mitigation, management, and monitoring activities associated with the implementation of the HCP for a 60-year period carried out by the Permittee at the University of California at Santa Cruz that may result in incidental take of listed Plan Species. “Covered Activities” includes such activities as site preparation; road and driveway construction and repair; utility installation and repair; drainage system maintenance and repairs; operation of vehicles and equipment; other activities at and in the vicinity of the constructed facilities related to the use and operation of those facilities; preconstruction surveys and monitoring of the construction sites, and relocation of Plan Species from the construction site, if necessary; operation of vehicles and equipment in areas of the Preserve; stock grazing; fire prevention and suppression; habitat enhancement; monitoring activities; non-native plant and wildlife eradication; and similar activities or techniques, all as more particularly described in Chapters 2 and 5 of the HCP.
- 3.6 “Covered Lands” means the lands upon which the Permit authorizes incidental take of Plan Species and the lands to which the HCP’s conservation and mitigation measures apply. These lands are described in Chapters 1 and 2 and illustrated in Figure 1-2 of the HCP. In addition, the term “Covered Lands” shall include any lands added to the HCP by amendment of the HCP, and shall exclude any lands removed from coverage by the HCP.
- 3.7 “HCP” means that habitat conservation plan prepared by the Permittees in connection with the Ranch View Terrace Project and the equipment storage building of the Emergency Response Center Project in Santa Cruz County, California.
- 3.8 “Listed Species” means the same as it does under the ESA and regulations of the Service, as the ESA and regulations may be amended from time to time.
- 3.9 “Permit” means the incidental take permit issued by the Service to the Permittee pursuant to Section 10(a)(1)(B) of the ESA for take incidental to Covered Activities on Covered Lands, as such permit may be amended.
- 3.10 “Plan Species” means those listed species identified in the HCP as covered by the HCP, each of which the HCP addresses in a manner sufficient to meet all of the criteria for issuing an incidental take permit under ESA, Section 10(a)(1)(B).

- 3.11 “Take” means “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.” The term as used in this document is intended to have the same meaning as it does under the ESA. (16 USC 1532 (19)) Service regulations (50 CFR 17.3) define “harm” to include significant habitat modification or degradation which actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. “Harassment” is defined by the Service as an intentional or negligent action that creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering.
- 3.12 “Unforeseen Circumstances” means changes in circumstances that affect a species or geographic area covered by the HCP that could not reasonably be anticipated by The Regents and the Service at the time of the plan's negotiation and development and that result in a substantial and adverse change in the status of the Plan Species.

#### **4.0 OBLIGATIONS OF THE PARTIES**

- 4.1 Obligations of the Parties. The Permittee will fully and faithfully perform all obligations assigned under this Agreement, the HCP, and the Permit. This includes all measures referenced in the HCP to avoid, minimize, and monitor impacts to Plan Species during Covered Activities, as well as mitigation measures to assure effects to Plan Species are mitigated to the maximum extent practicable.
- 4.2 Issuance of Permit. Promptly after execution of this Agreement by both Parties and satisfaction of all other applicable legal requirements, the Service will issue the Permittee a Permit under Section 10(a)(1)(B) of the ESA, authorizing incidental take by the Permittee of each listed Plan Species resulting from Covered Activities on Covered Lands. The obligations of the Permittee under this Agreement and the HCP shall only become effective upon issuance of the Permit.
- 4.2.1 Permit coverage. The Permit will identify all Plan Species, to include the California red-legged frog and Ohlone tiger beetle. The Permit will take effect for listed Plan Species at the time the Permit is issued, for a period of sixty (60) years.

4.2.2 “No Surprises” assurances. Provided that the Permittee has complied with its obligations under the Permit, this Agreement, and the HCP, the Service can require the Permittee to provide mitigation beyond that provided for in the HCP only under Unforeseen Circumstances, and only in accordance with the “No Surprises” regulations.

4.2.3 Interim obligations upon a finding of unforeseen circumstances. If the Service makes a finding of unforeseen circumstances, during the period necessary to determine the nature and location of additional or modified mitigation, the Permittee will avoid contributing to appreciably reducing the likelihood of the survival and recovery of the affected species.

- 4.3 Establishment of Preserves. The Regents shall establish the Inclusion Area A Preserve and the Inclusion Area D Preserve, as described in the HCP, as land use designations in the campus Long Range Development Plan. No development or other actions inconsistent with these preserve designations shall be allowed within these preserves. Upon execution of this Agreement, notice of the designation of Inclusion Area A will be recorded with the County Recorder. The HCP, the Permit, this Agreement and these preserve designations shall not be modified without the prior written approval of the Service. The final “Campus Habitat Reserve” designation of Inclusion Areas A and D shall be attached in relevant parts upon execution of this Agreement.

## **5.0 INCORPORATION OF THE HABITAT CONSERVATION PLAN**

The HCP and each of its terms and provisions are intended to be, and by this reference are, incorporated herein, and the terms and provisions thereof are made a part of this Agreement. In the event of any direct contradiction between the terms of this Agreement and the HCP, the terms of this Agreement shall control. In all other cases, the terms of this Agreement and the terms of the HCP shall be interpreted to be supplementary to each other.

## **6.0 TERM**

This Agreement and the HCP shall become effective on the date that the Service issues the Permit. This Agreement, the HCP, and the Permit shall remain in full force and effect for a period of 60 years from issuance of the Permit.

## **7.0 PERMIT SUSPENSION OR REVOCATION**

Except as otherwise provided for under the terms of this Agreement, the Permit may be suspended or revoked in conformance with laws and regulations in force at the time of such suspension or revocation.

## **8.0 RELINQUISHMENT OF THE PERMIT**

- 8.1 In General. The Permittee may relinquish the Permit in accordance with the regulations of the Service in force on the date of such relinquishment. These regulations are currently codified at 50 CFR Section 13.26.
- 8.2 Terms of Relinquishment. Permittee's obligations under this Agreement will terminate upon Permittee's request if no Covered Activities have been conducted prior to Permit relinquishment. Notwithstanding relinquishment of the Permit, Permittee will be required to provide post-relinquishment mitigation for any take of Plan Species that the Service deems has not been fully mitigated under the HCP by the time of relinquishment. The Permittee's obligations under that HCP and this Agreement will continue until the Service notifies Permittee that no post-relinquishment mitigation is required, or that all required post-relinquishment mitigation is completed.
- 8.3 Procedure for Relinquishment. If the Permittee elects to relinquish the Permit before expiration of the full term of the HCP, the Permittee will provide notice to the Service at least four months prior to the planned relinquishment. The notice will include a status report detailing the nature and amount of take of all Plan Species, the mitigation provided for these Plan Species prior to relinquishment, and the status of the Permittee's compliance with all other terms of the HCP. Within four months after receiving a notice and status report meeting the requirements of this paragraph, the Service will give notice to the Permittee stating whether any post-relinquishment mitigation is required and, if so, the amount and terms of such mitigation and the basis for the Service's conclusions. If the Service determines that no post-relinquishment mitigation is required, all obligations assumed by the parties under this Agreement will terminate upon the Service's issuance of such notice. If the Permittee disagrees with the Service's determination, the Parties may choose to use the dispute resolution procedures described in Section 16.4 of this Agreement. The Permittee will continue to carry out its obligations under the HCP until any disputes are resolved. If the Parties

are unable to agree, the Service will have the final authority to determine whether the Permittee is required to provide post-relinquishment mitigation.

- 8.4 Extension of the Permit. Upon agreement of the Parties and compliance with all applicable laws, the Permit may be extended beyond its initial term under regulations of the Service in force on the date of such extension. Extension of the Permit constitutes extension of the HCP and this Agreement for the same amount of time, subject to any modifications that may be required at the time of extension.

## **9.0 FUNDING**

The Permittee warrants that it has provided and will expend such funds as may be necessary to fulfill all of its obligations under the HCP as assured in the HCP and this Agreement. The Permittee will promptly notify the Service of any material change in its financial ability to fulfill its obligations. In addition to providing any such notice, the Permittee will provide the Service with such reasonably available financial information that the Parties agree will provide adequate evidence of the Permittee's ability to fulfill its obligations.

## **10.0 MONITORING AND REPORTING**

- 10.1 Obligation to Monitor. The Permittee shall undertake such monitoring as required under the terms of the HCP.
- 10.2 Planned Periodic Reports. The Permittee will submit to the Service such periodic reports as required in the HCP, concerning HCP implementation and results of the monitoring program described in the HCP.
- 10.3 Certification of Reports. All reports will include the following certification from a responsible company official who supervises or directs preparation of the report:

I certify that, to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of this report, the information submitted is true, accurate, and complete.



- 10.4 Monitoring by Service. The Service may conduct inspections and monitoring in connection with the Permit in accordance with the HCP and regulations in effect at the time of such inspections. (See 50 CFR Section 13.47.)

## **11.0 CHANGED AND UNFORESEEN CIRCUMSTANCES**

- 11.1 The HCP identifies Changed Circumstances and addresses Unforeseen Circumstances in Chapter 7. The Permittee shall carry out the responsibilities identified in Chapter 7 of the HCP, including coordination with the Service as appropriate.

As noted under Section 2.2 of this Agreement, this notice concerns a step in the review and processing of a Section 10(a)(1)(B) permit and any subsequent permit issuance will be in accordance with the Court's order in *Spirit of the Sage Council v. Norton*, Civil Action No. 98-1873 (D.D.C.). When, in response to the Court's order, the "No Surprises" assurance rule is reinstated or revised, the reinstated or revised "No Surprises" assurances shall apply to Changed and Unforeseen Circumstances under this Agreement and the HCP.

- 11.2 Permittee-Initiated Response to Changed and Unforeseen Circumstances. The Permittee will give notice to the Service within seven days after learning that any of the Changed Circumstances listed in Chapter 7 of the HCP has occurred. As soon as practicable thereafter, but no later than 30 days after learning of the Changed Circumstance, the Permittee will modify its activities in the manner described in Chapter 7 of the HCP to the extent necessary to mitigate the effects of the Changed Circumstances on Plan Species, and will report to the Service on its actions. When a Changed Circumstance occurs, the Permittee will make such modifications without awaiting notice from the Service.
- 11.3 Service-Initiated Response to Changed Circumstances. If the Service determines that Changed Circumstances have occurred and that the Permittee has not responded in accordance with Chapter 7 of the HCP, the Service will so notify the Permittee and will direct the Permittee to make the required changes. Within 30 days after receiving such notice, the Permittee will make the required changes and report to the Service on its actions. Such changes are provided for in the HCP, and hence do not constitute Unforeseen Circumstances or require an amendment of the Permit or HCP.

## **12.0 ADAPTIVE MANAGEMENT**

Adaptive management measures will be implemented by the Permittee in accordance with Chapter 6 of the HCP.

- 12.1 Permittee Initiated Adaptive Management. The Permittee will implement the adaptive management provisions in Chapter 6 of the HCP as required therein without awaiting notice from the Service, and will report to the Service on any actions taken pursuant to said section.
- 12.2 Service Initiated Adaptive Management. If the Service determines that one or more of the adaptive management provisions requiring implementation by the Permittee have been triggered, and that the Permittee has not changed its management practices in accordance with the provision of the HCP, the Service will so notify the Permittee and will direct it to make the required changes. Within 30 days after receiving such notice, the Permittee will make the required changes and report to the Service on its actions. Such changes are provided for in the HCP, and hence do not constitute Unforeseen Circumstances or require amendment of the Permit or HCP.
- 12.3 Reductions in Mitigation. The Permittee will not implement adaptive management changes that may result in less mitigation than provided for Plan Species under the original terms of the HCP, unless the Service first provides written approval. The Permittee may propose any such adaptive management changes by notice to the Service, specifying the adaptive management modifications proposed, the basis for them, including supporting data and the anticipated effects on Plan Species, and other environmental impacts. Within 120 days of receiving such a notice, the Service will approve the proposed adaptive management changes, approve them as modified by the Service, or notify the Permittee that the proposed changes constitute Permit amendments that must be reviewed under section 15.2 of this Agreement.
- 12.4 No Increase in Take. This Section does not authorize any modifications that would result in an increase in the amount and nature of take, or increase the impacts of take, or adversely modify critical habitat of Plan Species beyond that analyzed under the original HCP and any amendments thereto. Any such modification must be reviewed as a Permit amendment under section 14.2 of this Agreement.

### **13.0 LAND TRANSACTIONS**

- 13.1 Leasing or Licensing of Land by Permittee. It is understood by the Parties that the Regents anticipate granting one or more leases or licenses of the Covered Lands to a third party developer or developers and/or future occupants of the Project. Such leases and licenses may be for terms up to 60 years, and may be renewable. Title to improvements on the Covered Lands may also be transferred. Provided that the Regents retain the fee title to the Covered Lands, and continue to be responsible for compliance with the HCP, all such transactions are authorized under the terms of this Agreement, and no notice, modification or amendment shall be required as a result provided that any lease or licensee is required to comply with the terms of the HCP, the Permit, and this Agreement, and provided that evidence of such requirements are provided or available to the Service.
- 13.2 Disposal of Land by the Permittee. The Permittee may transfer fee title to Covered Lands by sale, exchange or any other means with prior approval of the Service and an amendment of the permit in accordance with Section 14.2 of this Agreement, except that transfers by the Permittee of Covered Lands may be considered Minor Modifications, as provided in section 14.1 of this Agreement if:
- (a) The land will be transferred to a recipient who has agreed prior to transfer to be bound by the HCP and this Agreement as they apply to the transferred lands, and the Service determines that this recipient has sufficient financial resources to adequately fund its affirmative obligations under the HCP, and otherwise meets the requirements of applicable Permit requirements. Upon approval of the transfer and request of the transferee, the Service will issue an incidental take permit to the transferee covering the transferred land, subject to applicable laws and regulations in effect at the time of transfer.
  - (b) The land will be transferred to a non-federal entity that has entered into an agreement acceptable to the Service, has granted a conservation easement acceptable to the Service, or by other means acceptable to the Service has provided assurances that the lands will be managed in such a manner and for such duration so as not to compromise the effectiveness of the HCP.

- (c) The land will be transferred to an agency of the Federal government where, prior to transfer, the Service has determined that transfer will not compromise the effectiveness of the HCP based on adequate commitments by that agency regarding management of such land.
- (d) The Service determines that the land to be transferred, together with any land previously disposed of under this exception, does not exceed 5% of the area of the Covered Lands at the time this Agreement takes effect, and will not have material impact on the ability of the Permittee to comply with the requirements of the HCP and the terms and conditions of the Permit. Upon disposition of such lands which do not require amendment of the Permit, such lands no longer shall be considered Covered Lands, and the Permit and this Agreement, including the HCP, shall remain unchanged except they shall not longer apply to such lands.

In the event of disposal in accordance with (a) through (d) of this section, the Permittee will be deemed to be in continuing compliance with this Agreement, including the HCP, with respect to such disposed lands.

## **14.0 MODIFICATIONS AND AMENDMENTS**

### **14.1 Minor Modifications.**

- (a) Any Party may propose Minor Modifications, as described in this Section 14.1(b), to the HCP or this Agreement by providing notice to all other Parties. Such notice shall include a statement of the reason for the proposed modification and an analysis of its environmental effects, including its effects on operations under the HCP and on Plan Species. The Parties will use best efforts to respond to proposed modifications within 60 days of receipt of such notice. Proposed modifications will become effective upon all Parties' written approval. If, for any reason, a receiving Party objects to a proposed modification, it must be processed as a Permit amendment in accordance with section 14.2 of the Section. The Service will not propose or approve Minor Modifications to the HCP or this Agreement if the Service determines that such modifications would result in operations under the HCP that are significantly different from those analyzed in connection with the original HCP, adverse effects on the

environment that are new or significantly different from those analyzed in connection with the original HCP, or additional take not analyzed in connection with the original HCP.

- (b) Minor Modifications to the HCP and this Agreement processed pursuant to this section may include but are not limited to the following:
  - (1) Corrections of typographic, grammatical, and similar editing errors that do not change the intended meaning,
  - (2) Correction of any maps or exhibits to correct errors in mapping or to reflect previously approved changes in the Permit or HCP,
  - (3) Minor changes to survey, monitoring or reporting protocols,
  - (4) Land dispositions designated as Minor Modifications in Section 13 of this Agreement, and
  - (5) Minor boundary changes to the Preserves that do not result in a net loss of land and do not alter effectiveness of the HCP.
- (c) Modifications to the HCP or IA not meeting the criteria of this section will be processed as Permit amendments in accordance with section 14.2 of this Section.
- (d) Minor modifications shall not require amendment of the Permit, but shall require amendment of the Agreement and the HCP by agreement of the Parties.

#### 14.2 Major Amendment.

- (a) Major amendments to the HCP are any amendments not treated as minor modifications, and shall require an amendment to this Agreement and the Permit.
- (b) The Parties anticipate that amendment of the Permit will be treated as an original permit application. Such application typically will require submittal of a revised HCP, a completed permit application form with appropriate fees, and a revised implementation agreement, and may

require environmental review documents prepared in accordance with NEPA and a revised biological opinion. However, the Parties acknowledge that specific documentation requirements may vary based on the nature of the amendment.

## **15.0 REMEDIES, ENFORCEMENT, AND DISPUTE RESOLUTION**

- 15.1 In General. Except as set forth below, each Party shall have all remedies, at law and in equity, otherwise available to enforce the terms of the Permit, this Agreement, and the HCP.
- 15.2 No Monetary Damages. No Party shall be liable in damages to any other Party or other person for any breach of this Agreement, any performance or failure to perform a mandatory or discretionary obligation imposed by this Agreement, or any other cause of action arising from this Agreement. Nothing contained in this Agreement is intended to limit the authority of the United States government to seek civil or criminal penalties or otherwise fulfill its enforcement responsibilities under the ESA.
- 15.3 Injunctive and Temporary Relief. The Parties acknowledge that the Plan Species are unique and that their loss as species would result in irreparable damage to the environment and that therefore injunctive and temporary relief may be appropriate to ensure compliance with the terms and conditions of this Agreement.
- 15.4 Dispute Resolution. The Parties recognize that disputes concerning interpretation, implementation, compliance, or termination of this Agreement, or other disputes involving this Agreement, the HCP, of the Permit may arise from time to time. The Parties agree to work together in good faith to resolve such disputes, using the informal dispute resolution procedures set forth in this section, or such other procedures upon which the Parties may later agree. However, if at any time any Party determines that circumstances so warrant, it may seek any available remedy without waiting to complete informal dispute resolution.

15.4.1 Informal dispute resolution process. Unless the Parties agree upon another dispute resolution process, or unless an aggrieved Party has initiated administrative proceedings or suit in Federal court as provided in this section, the Parties may use the following process to attempt to resolve disputes:

- (a) The aggrieved Party will notify the other Parties of the provision that may have been violated, the basis for contending that a violation has occurred, and the remedies it proposes to correct the alleged violation.
- (b) The Party alleged to be in violation will have 30 days, or such other time as may be agreed, to respond. During this time, it may seek clarification of the information provided in the initial notice. The aggrieved Party will use its best efforts to provide any information then available to it that may be responsive to such inquiries.
- (c) Within 30 days after such response was provided or was due, representatives of the Parties having authority to resolve the dispute will meet and negotiate diligently and in good faith toward a solution satisfactory to all Parties, or will establish a specific process and timetable to seek such a solution.
- (d) If any issues cannot be resolved through such negotiations, the Parties may consider non-binding mediation and other alternative dispute resolution processes and, if a dispute resolution process is agreed upon, will make diligent and good faith efforts to resolve all remaining issues through that process.

## **16.0 ENVIRONMENTAL REVIEW**

- 16.1 Issuance of a project approval to conduct development and management activities at the University of California at Santa Cruz is an action subject to review under the California Environmental Quality Act (CEQA). The University of California has prepared an Environmental Impact Report, which was prepared and certified by the Regents in 2004, pursuant to CEQA, and that analyzed the impacts of the project.
- 16.2 Issuing a section 10(a)(1)(B) permit by the Service to the Permittee is an action subject to the National Environmental Policy Act (NEPA). The Service is the lead agency under NEPA and has prepared an Environmental Assessment addressing the section 10(a)(1)(B) permit and accompanying HCP.

## **17.0 LEGAL REQUIREMENTS**

In order to fulfill the requirements which will allow the Service to issue the Incidental Take Permit, the HCP provides measures that are intended to assure that any take occurring within the Covered Lands that is incidental to otherwise legal activities will, to the maximum extent practicable, be minimized and mitigated; that procedures to deal with Unforeseen Circumstances are instituted; that adequate funding for the HCP is provided; and that the take will not appreciably reduce the likelihood of the survival and recovery of Plan Species in the wild. The HCP also includes measures that the Service has proposed as necessary or appropriate to achieve the purposes of the HCP.

## **18.0 COOPERATIVE EFFORT**

In order that each of the legal requirements as set forth herein is fulfilled, both Parties to this Agreement must perform certain specific tasks as set forth in the HCP. The HCP thus describes a cooperative program to conserve the Plan Species.

## **19.0 MISCELLANEOUS PROVISIONS**

19.1 No Partnership. Neither this Agreement nor the HCP shall make or be deemed to make any Party to this Agreement the agent for or the partner of any other Party.

19.2 Notice. Any notice permitted or required by this Agreement shall be in writing, delivered personally to the persons set forth below or shall be deemed given five (5) days after deposit in the United States mail, certified and postage prepaid, return receipt requested, and addressed as follows or at such other address as any Party may from time to time specify to the other Parties in writing. Notices may be delivered by facsimile or other electronic means, provided that they are also delivered personally or by certified mail. Notices shall be transmitted so that they are received within the specified deadlines.



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- 19.3 Entire Agreement. This Agreement, together with the HCP and the Permit, constitutes the entire Agreement between the Parties. It supersedes any and all other agreements, either oral or in writing between the Parties with respect to the subject matter hereof and contains all of the covenants and agreements among them with respect to these matters, and each Party acknowledges that no representation, inducement, promise or agreement, oral or otherwise, has been made by any other Party of anyone acting on behalf of any other Party.
- 19.4 Elected Officials Not to Benefit. No member of or delegate to Congress shall be entitled to any share or part of this Agreement, or to any benefit that may arise from it.
- 19.5 Availability of Funds. Implementation of this Agreement and the HCP by the Service is subject to the requirements of the Anti-Deficiency Act and the availability of appropriated funds. Nothing in this Agreement will be construed by the parties to require the obligation, appropriation, or expenditure of any money from the U.S. Treasury. The Parties acknowledge that the Service will not be required under this Agreement to expend any Federal agency's appropriated funds unless and until an authorized official of that agency affirmatively acts to commit to such expenditures as evidenced in writing. If appropriated funds are not available, the Service shall pursue in a timely manner other available means, and other alternative methods, to achieve the objective for which funds are needed.

- 19.6 Duplicate Originals. This Agreement may be executed in any number of duplicate originals. A complete original of this Agreement shall be maintained in the official records of each of the Parties hereto.
- 19.7 No Third-party Beneficiaries. Without limiting the applicability of the rights granted to the public pursuant to the provisions of 16 U.S.C. § 1540(g), this Agreement shall not create any right or interest in the public, or any member thereof, as a third party beneficiary hereof, nor shall it authorize anyone not a Party to this Agreement to maintain a suit for personal injuries or property damages pursuant to the provisions of this Agreement. The duties, obligations and responsibilities of the Parties to this Agreement with respect to third Parties shall remain as imposed under existing law.
- 19.8 Relationship to the ESA and Other Authorities. The terms of this Agreement shall be governed by and construed in accordance with the ESA and other applicable laws. In particular, except as expressly provided, nothing in this Agreement is intended to limit the authority of the Service to seek penalties or otherwise fulfill its responsibilities under the ESA. Moreover, nothing in this Agreement is intended to limit or diminish the legal obligations and responsibilities of the Service as an agency of the Federal government. Nothing in this Agreement will limit the right or obligation of any Federal agency to engage in consultation required under Section 7 of the ESA or other Federal law; however, it is intended that the rights and obligations of the Parties under this Agreement and the HCP will be considered in any consultation affecting the Permittee's use of the Covered Lands.
- 19.9 Applicable Laws. All activities undertaken pursuant to this Agreement, the HCP, or the Permit must be in compliance with all applicable state and Federal laws and regulations.
- 19.10 Successors and Assigns. This Agreement and each of its covenants and conditions shall be binding on and shall inure to the benefit of the Parties and their respective successors and assigns in force on the effective date of said action. Assignment or other transfer of the Permit shall be governed by the Service's regulations.
- 19.11 Attorneys' Fees. If any action at law or equity, including any action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, each Party to the litigation shall bear its own attorneys' fees and costs, provided that attorneys' fees and costs recoverable against the United States shall be governed by applicable Federal law.

19.12 References to Regulations. Any reference in this Agreement, the HCP, or the Permit to any regulation or rule of the Service shall be deemed to be a reference to such regulation or rule in existence at the time an action is taken.

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IN WITNESS WHEREOF, THE PARTIES HERETO have executed this Implementing Agreement to be in effect as of the date last signed below.

BY \_\_\_\_\_ Date \_\_\_\_\_

California/ Nevada Operations Office Deputy Manager  
United States Fish and Wildlife Service

BY \_\_\_\_\_ Date \_\_\_\_\_

President  
University of California